IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellants:	Mantena et al.	Confirmation No.:	8671
Serial No.:	09/752,330	Group Art Unit:	3625
Filed:	12/29/2000	Examiner:	Haq, Naeem U.
Title:	METHOD, SYSTEM AND PROGRAM PRODUCT FOR PROVIDING AN ENTITLED PRICE IN AN ELECTRONIC TRANSACTION		

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I hereby certify that this correspondence is being electronically transmitted to: Mail Stop Appeal Briefs – Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on November 8, 2006.

Rosalind Q. Spiller

Rosalind Q. Spiller

Date of Signature: November 8, 2006.

To: Mail Stop Appeal Briefs – Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

APPELLANTS' REPLY BRIEF TO THE BOARD OF PATENT APPEALS AND INTERFERENCES

This Reply Brief is being timely filed pursuant to 37 C.F.R. §41.41 in rebuttal to certain characterizations and conclusions set forth in the Examiner's Answer mailed January 17, 2006, for the above-designated Appeal.

ARGUMENT

Double Patenting

The Examiner's Answer continues to focus on published application serial number 2002/0087477. However, the application issued as U.S. Patent No. 6,999,949 on February 14, 2006 ("the '949 Patent") with claims differing from those present in the published application. Appellants submit the provisional rejection over the published application is, therefore, improper.

In addition to the differences set forth in Appellant's Appeal Brief, claim 1 of the '949 Patent recites, for example, electronically *receiving* a sales order in a private electronic environment from a purchaser in a public electronic environment, while claim 1 of the present application recites electronically *sending* by a requestor a request for an entitled price based on a preexisting entitlement from a public electronic environment. Further, there is a separate step in claim 1 of the present application of automatically routing the request to a private electronic environment. Appellants submit there is no such express recitation in the '949 Patent.

The Examiner's Answer argues that it does not matter what information is being requested. However, Appellants continue to submit that sending a request for an entitled price is simply different from receiving a sales order, and makes a difference in what is done at the back end. For example, a request for an entitled price does not require order

processing. In addition, the makeup of an electronic request and an electronic order are different, i.e., the ones and zeroes understood by a computing unit are different. Thus, there is a real-world computing difference in the information.

For all the reasons above, and in the Appeal Brief, Appellants continue to submit that the double patenting rejection should be overturned.

35 U.S.C. §112 Rejection

The Examiner's Answer withdrew the §112 rejection. However, an allegation was made therein that Appellants agree with the characterization of "preexisting entitlement" given in the final Office Action, i.e., that a preexisting entitlement is a contract. Appellants never agreed that a contract is the only thing meeting the definition. While a contract is one example of something that meets the definition set forth in the present application, it is not the only one.

35 U.S.C. §103 Rejection

The Examiner's Answer argues that "real time" is a relative term, and cites a new reference (Kurose) in support of the proposition that all networks experience some sort of delay, even real time networks. Appellants have not previously been afforded an opportunity to comment on Kurose or this line of reasoning.

However, the present claims recite "real time" in the context of a waiting requestor. Thus, Appellants submit the term is from the perspective of the requestor, not the system. Typical system delays of portions of a second have relevance to system performance, but do not have particular importance to a waiting user. Thus, the alleged absence of guidance regarding system delays is not relevant. Appellants submit that one of ordinary skill in the art would understand what is meant by "real time' in the context of claim 1, especially in light of the specification (see below). As one example of what one of ordinary skill would understand, a definition for "real time" from the well-known whatis.com information technology site is given as (cited in related case on appeal for serial no. 09/751,069, attached to response dated February 21, 2006 therein, a copy of which is attached hereto):

> Real time is a level of computer responsiveness that a user senses as sufficiently immediate or that enables the computer to keep up with some external process (for example, to present visualizations of the weather as it constantly changes). Real time is an adjective pertaining to computers or processes that operate in real time. Real time describes a human rather than a machine sense of time.

The above definition is also consistent with the description of a communication example given in the present application starting at page 8, line 15 (in particular, see page 9, lines 10-11). See also, for example, page 3, lines 23-24. In that example, an employee of a large company having a contract with an online merchant sends a request for an entitled price via a browser and waits for a response with the requested entitled price. Thus, it refers to real time from the point of view of the user. Thus, Appellants submit an exact number is not necessary and one of ordinary skill in the art can determine whether a

given delay is acceptable using everyday computing experiences of what typical users expect.

Moreover, it is clear that under any reasonable definition or understanding of "real time" in the context of computing, Lidow is not providing pricing in real time, let alone the claimed entitled price. As shown in FIG. 17, and described at column 23, lines 43-46 of Lidow, pricing is calculated after delivery of the goods to the customer. As anyone who has ever ordered something knows, delivery typically takes days or even weeks. Even overnight shipping cannot reasonably be considered real time in this context. Thus, Appellants submit providing pricing after delivery cannot reasonably be considered to be real time.

With regard to the case law cited in the Examiner's Answer, namely, *In re Gulack* and *In re Lowry*, Appellants maintain that neither is applicable to the present case for the reasons stated in the Appeal Brief. As to MPEP 2106 cited in the Examiner's Answer, Appellants submit that the claimed entitled price does not fall within the list of descriptive material, i.e., it is not music, literature, art, photographs, or a mere arrangement of compilation of facts or data. It is a specific request for a price based on a preexisting entitlement. Such a request is what the private electronic environment is looking for. As set forth in the present application, getting an entitled price from a private electronic environment to a public one has been problematic, and the present invention addresses that. Thus, the inclusion of an entitled price is integral to the claim.

Therefore, Appellants submit the present claims are not obvious over Lidow, and the rejection should be overturned.

With regard to claim 10, the Examiner's Answer cites to Lidow at column 27, lines 29-31 and FIG. 24, item 588 against the forwarding aspect. Messaging services 588 are alleged to read on the claimed messaging middleware. While Appellants disagree, no mention is made in the Examiner's Answer of a global computer network site server, as recited in claim 10. Appellents submit there is no such server in Lidow. According to FIG. 24 of Lidow and the description thereof, communications from the parties go directly to messaging services 588. There is no teaching in Lidow of communications, let alone a request for an entitled price, being forwarded from a global computer network site server to messaging middleware, as claimed.

The Examiner's Answer also alleges that the causing aspect of claim 10 is inherent in Lidow. The Examiner's Answer cites to both the Extranet Manager and the Messaging Services of Lidow for the prospect of a command being sent to the ERP System therein. However, the claim does not simply recite that a command is issued from somewhere, but, rather, causing by the messaging middleware (not middleware generally) a command to be issued to the ERP application.

Therefore, Appellants submit that claim 10 is not obvious over Lidow, and the rejection should be overturned.

In conclusion, Appellants submit that there is no double patenting, and that the claims are not obvious over Lidow. Therefore, Appellants submit that the final Office Action should be reversed in all respects.

Wayne F. Reinke
Attorney for Appellants
Registration No.: 36,650

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HESLIN ROTHENBERG FARLEY & MESITI P.C.
5 Columbia Circle
Albany, New York 12203-5160
Telephone: (518) 452-5600
Facsimile: (518) 452-5579

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real time

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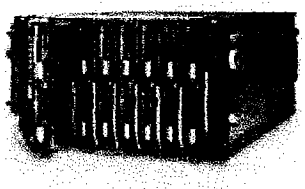
Also see real-time clock and real-time operating system.

Real time is a level of computer responsiveness that a user senses as sufficiently immediate or that enables the computer to keep up with some external process (for example, to present visualizations of the weather as it constantly changes). *Real-time* is an adjective pertaining to computers or processes that operate in real time. Real time describes a human rather than a machine sense of time.

In the days when mainframe batch computers were predominant, an expression for a mainframe that interacted immediately with users working from connected terminals was *online in real time*.



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